



*'O'he pau ka 'ike i ka hālau ho'okahi*

## **Connections Public Charter School**

*A Community, Business & Education Learning 'Ohana*

5/7/14

Chairperson Payne and members of the State Public Charter School Commission:

The recitals in the proposed new contract define this contract as “a fixed-term, bilateral, renewable contract between a public charter school and a charter school authorizer that outlines the role, powers, responsibilities and performance expectations for each party to the contract.” It also says, “through this Contract, the Parties are desirous of ensuring clear requirements for accountability while preserving the autonomy of the School to support new, innovative approaches to education and contribute to the development of high quality public charter schools throughout the State.”

A bilateral contract is an agreement in which each of the parties to the contract makes a promise or set of promises to each other. The Commission's “promise” is to develop and enforce “clear requirements for accountability while preserving the autonomy of the School to support new, innovative approaches to education.” The school agrees to comply with the provisions of the contract. For a school to meet this obligation, they must understand the “requirements for accountability” that they will be held to. Both parties agree to “comply with all applicable federal, State and county laws, ordinances, codes, rules and regulations” in provision 1.3. Provision 14.4 says, “In the event of a conflict between this Contract, State law and the administrative rules pertaining to charter schools, the order of precedence shall be State law, followed by administrative rule, followed by the terms and conditions of this Contract.”

The law defining the Commission as authorizer's powers, duties, and liabilities can be found in §302D-5. The Commission is responsible for executing its essential powers and duties by “negotiating and executing sound charter contracts with each approved public charter school.” When I searched the first five pages of the Commission's staff recommendation submittal for this item of your agenda I could not find the word “negotiate” or “negotiation.” Instead, the schools received “opportunities to submit feedback and comments.” The “Decision Making Statement” on pages 4 and 5 describes the “process for contract revisions” as “opportunities to submit feedback and suggest revisions to the Charter Contract.”

**THE CHARTER SCHOOLS HAVE NOT BEEN PROVIDED WITH AN OPPORTUNITY TO NEGOTIATE THIS CONTRACT AS THE LAW REQUIRES!**

Your Commission, and Mr. Hutton, are still refusing to negotiate a new charter school contract. Last year, you managed to get a budget proviso that forced our schools to sign the contract or lose most of our per pupil state funding. On February 21, 2014, I gave a letter to Commission staff requesting individual negotiations. On March 6, 2014 our Governing Board chair and I received an email from Jannelle Watson with an attached letter from Catherine Payne and

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Thomas Hutton. The letter did not address our request to negotiate the contract. We were directed to contact Stephanie Klupinski if we wanted to set up a phone call to discuss this matter with our Governing Board. I responded,

“Stephanie,

I am assuming you have seen the attached document that Tierney (our Governing Board chair) and I received today. Our February 21, 2014 letter called for the beginning of REAL negotiations of the new bilateral contract per §302D-5(4). I think our Governing Board would be more than willing to begin negotiations with a phone call. However, if the intent is to "fine-tune" a boiler plate contract that will be the same for all charter schools, I sincerely doubt that our Governing Board will find any interest in participating. We are seeking to negotiate a unique, bilateral contract.”

On March 7, 2014 Tom Hutton replied, “John, while there are a few school-specific elements, such as each school’s Exhibit A and, if the school wishes propose any, the school-specific elements of the Academic Performance Framework, the rest of what we all are working on here is the baseline accountability provisions that will be applied fairly and even-handedly to all 34 schools, not 34 varieties of them.

If a particular contract provision truly fails to recognize a particular school’s exceptional circumstances, the Commission’s approach is to explore how that provision can be revised to account for those circumstances so that it still works for all schools, in a way that preserves fairness for all.

The collective and individual engagement of the schools is very important to this process. The Commission remains committed to respectfully discussing, carefully considering, and thoughtfully addressing the input it receives.”

The majority of our charter schools have worked with our Deputy Attorney General to develop modifications of the draft contract before you. These modifications form the baseline of provisions we would like to negotiate. They are not suggestions for revisions that can be dismissed by your staff for arbitrary reasons. Does the Commission believe that you will get a better outcome through the use of force? Are you refusing to negotiate because of a fear that you may be forced to accept unwanted compromises? Does the Commission believe that negotiating is a waste of time? Or, are you refusing to negotiate with us because you do not want to grant us the legitimacy that such an act would imply? Personally, I am at a loss for an explanation and would appreciate clarification from the Commission as to why you are refusing to follow the law. On April 14, 2014 I mailed a hard copy notice of disputes and violations of contract terms to Tom Hutton. I copied our Governing Board chair, Commission Chair Catherine Payne, BOE Chair Don Horner, and BOE Hawaii Island representative Brian De Lima. It was delivered on April 15, 2014 at 12:18 pm. Therefore the 90 day timeline for an official (written) response by the Commission is July 14, 2014 according to Provision 14.5 of the current contract. The notice of disputes and violations of contract terms included the Commission's failure to negotiate. I am assuming that I must wait until July 14 for a response from the Commission.

I'd also like to note several other sections of the draft contract before the Commission that Connections PCS considers out of compliance with the law. The law (§302D-5(b)(1)) requires the Commission to “act as the point of contact between the department and a public charter school it authorizes.” Provisions 3.5.3, 3.6, 5.7, 11.9.1, and 12.2 propose relieving the Commission of this responsibility required by the law. The “clear requirements for accountability” called for in the recitals are not clear when the Commission and/or the Commission staff give precedence to provisions of the contract over the law.

It is also unclear how this proposed contract will be “preserving the autonomy of the School to support new, innovative approaches to education and contribute to the development of high quality public charter schools throughout the State.” Requiring the school to “adopt and adhere to a conflict of interest policy which is consistent with Ch. 84” does not preserve the autonomy of the school's Governing Board (provision 2.2). If the Governing Board is autonomous, how can it be directed to develop a specific policy? The following provisions of the proposed contract also undermine the autonomy of the school: 3.2, 3.4, 5.2, 5.5, 5.6, 5.7, 6.1, 6.3, 6.4, 6.8, 7.1, 7.3.3, 7.4, 8.7, 9.3, 9.4, 10.4, 10.7, 11.3.4, 11.4, 11.4.1, 11.5, and 12.5.



**STATE OF HAWAII**  
**Laupahoehoe Community Public Charter School**

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School Year 2013-2014

May 16, 2014

Hawaii State Public Charter School Commission  
1111 Bishop Street Suite 516  
Honolulu, Hawaii 96813

Dear Commissioners,

Due to the many unresolved and potentially harmful provisions and wording contained within the proposed Charter School Contract Template, and the fact that there has not been any bilateral negotiation with schools as required by law, I support the following:

1. That the Commission delay approval of the proposed revision to the State Public Charter Schools Contract; and
2. That the Commission deny delegation of authority to the Executive Director of Commission regarding the submission of a proposed State Public Charter Schools Contract and any related suggestions negotiations with schools; and
3. That the Commission create an ad-hoc committee with members from the Commission, Commission staff members, and charter school leaders to negotiate a template and any associated recommendations such as creating administrative rules and negotiations with individual schools.

Sincerely,

  
David Rizor, PhD



**DATE: May 17, 2014**

**TO: Catherine Payne, Chairperson, Charter School Commission**  
**Peter Tomozawa, Vice Chairperson, Charter School**  
**Commission**  
**Charter School Commission Members**

**Cc: Ka'iulani Pahio, Nā Lei Na'auao**  
Lynn Finnegan, Executive Director, Hawai'i Charter Schools Network  
**Tom Hutton, Executive Director, Hawai'i Charter School**  
Commission

**FROM: Taffi Wise on behalf of Kanu o ka 'Āina NCPCS; member of Nā**  
Lei Na'auao Native Hawaiian Charter School Alliance and Hawai'i  
Charter School Network

**RE: Response to Questions, May 8, 2014 Commission Meeting**

The following is a response to the two main questions/concerns voiced at the May 8, 2014 meeting by Commissioners:

1. What specifically in the contract infringes on the schools ability to carry out its mission?
2. Perplexed about data provided by staff

**Response to Question #1**

Deputy Attorney General Carter Siu advised that the contract should be simple, clear, and concise in outlining the essential provisions of contractual obligations. It is recommended that the extraneous language be removed as the tone of the document is punitive.

Specific areas of the current unilateral template that infringe upon the mission of schools are cited and referenced below:

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highest*

1. On Hawaiian language medium schools, Hawaiian immersion schools, Hawaiian bilingual schools and Hawaiian culture-based schools by not including or acknowledging, and some places contradicting, the Native American Language Act and the Hawaii State Constitution specific to Hawaiian language and its heritage:
  - Where as...to acknowledge intent and purpose
  - 1.3 - Compliance with Laws
  - 3.3.1 & 3.3.2 - Educational Program
  - 3.5.1 & 3.5.3 & 3.5.4. & 3.6 & 3.7 - Education of Students with Disabilities
  - 4.1 & 4.3 & 4.4 School Performance
  - 5.2 & 5.5 Student Admissions, Enrollment, Withdrawal & Dismissal
  - 6.4 & 6.10 Operation of School
  - 10.3 & 10.4 Personnel
  - 11.5 Reporting & Data
2. On services and partnerships with State Colleges and Universities as a positive sequence in educational performance to achieve the ultimate K-12 educational goal, preparation for college and career:
  - 5.4 Student Admission, Enrollment, Withdrawal, & Dismissal - Joint Enrollment
  - 7.1 & 7.2 & 7.3.1. Facilities
3. On General language inserted throughout the contract that subjects Charter Schools to the DOE unnecessarily:
  - 5.7 Withdrawal and Transfer
  - 10.3 Teacher Credentials
  - 11.9.1 School Closure
  - 12.2 Monitoring
  - 14.3 Miscellaneous Provisions – Governing Law – “including all requirements imposed by DOE policy and regulation”
4. On Governing Boards Responsibilities and Authorities:
  - 7.3.3 Facilities – Any other law...
  - 8.5 Federal Funding - alternate distribution

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- 8.6 Title 1 - set-aside funds
  - 8.7 Additional Funds
  - 9.6 Chart of Accounts
  - 10.4 Evaluations – criteria outlined by Commission
  - 10.5 Non Instructional Employees
5. On BOE Responsibilities and Authorities:
- 14.4 Conflict Between Contract, Law and Administrative Rules
  - 14.5 Dispute Resolution - “decisions by the Commission shall be final and conclusive”
6. On Setting the schools up for success:
- 11.1.1 Reporting & Data – clear reporting and data collection requirements prior to school year
  - 11.3.1 Commission provide legislative and DOE appropriate funding information prior to requesting budgets and cash flow projections which should be due after state budget is final
  - 11.2 & 11.5 Reporting & Data – Enrollment Counts & Educational Data - validation of data
  - 11.7 Schools Annual Report – template and advance notice for data collection
  - 11.9.2 Other Events – “(b) The arrest of any members” – individual civil rights question and schools do not know information
  - Allow school specific evidenced data to drive benchmarks, i.e. beginning school year enrollment - Kanu’s enrollment changes for past 13 years have varied 9% +
7. On mandating schools reserve 25% of “all funding” – grant funding cannot be reserved.

We request that the Commission use this contract vehicle to protect the constitutional rights and civil rights of our Hawaiian schools within its respective rights and authorities.

**Response to Question #2**

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The survey of the 31 schools provides unfiltered data directly from the schools regarding the way schools have felt about communication or lack thereof. The support and intervention of Commissioners on two occasions forced additional communication.

I request the Commission honor the intent of Act 130 and the intense work of the Task Force and provide the schools the genuine opportunity to negotiate a bilateral contract empowering the innovation and assessment of “Education with Aloha” to accommodate the individual needs of students with our current pedagogy and ideology as directed by BOE Policies 2104 and 2105.

In closing I pose this questions: How does the current unilateral contract template improve student performance and empower innovation to give back to the larger system?

In the spirit of aloha, I come to you with thankfulness and appreciation for your time energy and support.

Me ka ha‘ah‘a.

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highest*